

BY FAX

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FILED  
SAN MATEO COUNTY  
JUL 24 2019  
Clerk of the Superior Court  
By \_\_\_\_\_  
DEPUTY CLERK

9 Attorneys for Defendants  
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier  
10 Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN MATEO

13 SIX4THREE, LLC, a Delaware limited liability  
14 company,

15 Plaintiff,

16 v.

17 FACEBOOK, INC., a Delaware corporation;  
18 MARK ZUCKERBERG, an individual;  
CHRISTOPHER COX, an individual;  
19 JAVIER OLIVAN, an individual;  
SAMUEL LESSIN, an individual;  
MICHAEL VERNAL, an individual;  
ILYA SUKHAR, an individual; and  
20 DOES 1-50, inclusive,

21 Defendants.

22 Case No. CIV 533328

23 Assigned for all purposes to Hon. V. Raymond  
24 Swope, Dept. 23

25 **DECLARATION OF ZACHARY G. F.  
26 ABRAHAMSON IN SUPPORT OF  
DEFENDANT FACEBOOK, INC.'S OPENING  
27 BRIEF REGARDING DISCOVERY AND  
RELATED PROCEEDINGS**

28 Date: August 7, 2019  
Time: 9:00 a.m.  
Dept: 23 (Complex Civil Litigation)  
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015



1 I, Zachary G. F. Abrahamson, hereby declare as follows:

2 1. I am an attorney at law licensed to practice in the State of California. I am counsel of  
3 record in this matter for Defendant Facebook, Inc. ("Facebook"). I make this Declaration from personal  
4 knowledge, and if called to testify, I could and would testify competently thereto.

5 2. Following a limited document production in January 2019, no discovery whatsoever has  
6 taken place in this matter for over six months.

7 3. Jack Russo has refused to accept service on behalf of his client, Thomas Scaramellino.

8 4. Before the Court stayed discovery, Facebook attempted to serve Mr. Scaramellino  
9 multiple times over the course of four weeks at four addresses in two states using four different process  
10 servers.

11 5. On July 12, nearly 30 exhibits from the Declaration of David S. Godkin in Opposition to  
12 Defendants' Special Motions to Strike (anti-SLAPP) ("Godkin Declaration") were posted to a github site,  
13 where anyone could view and download them. *See*  
<https://github.com/BuxtonTheRed/btrmisc/tree/master/docs%20used%20for%20Computer%20Weekly%201st%20article>. All of the documents were designated confidential or highly confidential. Several of  
16 these documents had not been publicly disclosed before.

17 6. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from the Reporter's  
18 Transcript of Proceedings dated June 7, 2019 in this matter.

19 7. Attached hereto as **Exhibit B** is a true and correct copy of excerpts from the Reporter's  
20 Transcript of Proceedings dated July 19, 2019 in this matter.

21 8. Attached hereto as **Exhibit C** is a true and correct copy of a July 19, 2019 e-mail from the  
22 First Appellate District to Reno Fernandez and Joshua Lerner.

23 9. Attached hereto as **Exhibit D** is a true and correct copy of a March 23, 2019 e-mail from  
24 Gabriela Galindo to Catherine Kim.

25 10. Attached hereto as **Exhibit E** is a true and correct copy of an April 15, 2019 e-mail from  
26 Nationwide Legal to Catherine Kim.

11. Attached hereto as **Exhibit F** is a true and correct copy of the Order After April 10, 2018 Case Management Conference, *Halpern v. Uber Techs., Inc.*, No. CGC-15-545825 (San Francisco Cty. Super. Ct. Apr. 23, 2018).

I declare under penalty of perjury that the foregoing is true and correct. Executed this 24th day of July, 2019, in San Francisco, California.

ZACHARY G. F. ABRAHAMSON

## PROOF OF SERVICE

I am employed in San Francisco County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

On July 24, 2019, I served the following documents in the manner described below:

**DECLARATION OF ZACHARY G. F. ABRAHAMSON IN SUPPORT OF  
DEFENDANT FACEBOOK, INC.'S OPENING BRIEF REGARDING DISCOVERY  
AND RELATED PROCEEDINGS**

(BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Durie Tangri LLP for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by Federal Express for overnight delivery.

BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Durie Tangri's electronic mail system from [cortega@durietangri.com](mailto:cortega@durietangri.com) to the email addresses set forth below.

On the following part(ies) in this action:

**VIA MESSENGER SERVICE & EMAIL**

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Attorneys for Plaintiff Six4Three, LLC

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*Attorneys for Theodore Kramer and Thomas Scaramellino (individual capacities)*

**VIA EMAIL ONLY**

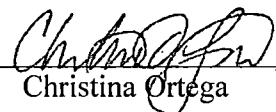
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*Attorneys for Birnbaum & Godkin, LLP*

1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct. Executed on July 24, 2019, at San Francisco, California.

3   
4 Christina Ortega

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# **EXHIBIT A**

1 IN THE SUPERIOR COURTS OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN MATEO

3 | -----000-----

5 SIX4THREE, LLC, CERTIFIED TRANSCRIPT

6 PLAINTIFFS,

7 VS. CASE NO. CIV533328

FACEBOOK, INC., ET AL.

DEFENDANTS.

12 REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE: HONORABLE V. RAYMOND SWOPE, JUDGE

14 DEPARTMENT 23

15 JUNE 7, 2019

17 | APPEARANCES

18 FOR THE DEFENDANTS:

19 JOSH H. LERNER LAURA E. MILLER SONAL N. MEHTA  
ATTORNEY AT LAW ATTORNEY AT LAW ATTORNEY AT LAW

20 NATALIE NAUGLE . . . ZACHARY ABRAHMSON  
ATTORNEY AT LAW . . . ATTORNEY AT LAW

## FOR BIRNBAUM AND GODKIN:

22 JOSEPH S. LEVERONI

23 FOR THE PRINCIPAL PARTY:

24 JACK RUSSO CHRISTOPHER SARGENT  
ATTORNEY AT LAW ATTORNEY AT LAW

26 REPORTED BY: GERALDINE VANDEVELD, C.S.R. 8634

1 BE GIVEN THAT HE HAS NOT SEEN THE NATURE OF THE CONTEMPT  
2 CITATION THAT IS YET TO BE FILED.

3 MR. KRAMER, YOU HAD MENTIONED THAT YOU HAD FOUND  
4 SEVERAL FIRMS; IS THAT CORRECT?

5 MR. KRAMER: THAT IS CORRECT, YOUR HONOR.

6 THE COURT: OKAY. AND SO WHY HAVEN'T YOU RETAINED  
7 ANY FIRMS?

8 MR. KRAMER: AS I MENTIONED, YOUR HONOR, I'M GETTING  
9 THE SAME RESPONSE FROM THEM THAT I'M GETTING FROM MR. LAVINE.  
10 THEY DO NOT KNOW WHAT THEY ARE GOING UP AGAINST AND,  
11 THEREFORE, CANNOT MOVE FORWARD WITH US BECAUSE THEY CAN'T SEE  
12 ANYTHING ON THE DOCKET OR DON'T KNOW WHAT IS COMING DOWN THE  
13 PIPE FOR THE COMPANY.

14 THE COURT: ALL RIGHT. IT SEEMS TO ME THAT YOU  
15 MAY NEED TWO COUNSEL. PRIMARILY YOU HAD CORPORATE COUNSEL  
16 MR. GODKIN AND MR. GROSS, CORRECT?

17 MR. KRAMER: THAT IS CORRECT, YOUR HONOR.

18 THE COURT: VERY WELL. SO YOU NEED TO REPLACE THAT  
19 COUNSEL.

20 MR. KRAMER: THAT IS CORRECT. AS PER MY  
21 DECLARATION, I HAD REQUESTED 90 DAYS FROM TODAY TO RETAIN THAT  
22 COUNSEL.

23 THE COURT: ALL RIGHT. WELL, THAT'S NOT GOING TO  
24 HAPPEN. I'M GOING TO GIVE YOU SOME TIME, BUT I'M NOT GIVING  
25 YOU 90 DAYS. AND THEN YOU NEED SECOND COUNSEL IF YOU DON'T  
26 HAVE A ONE SIZE FITS ALL FIRM THAT HANDLES CORPORATE

1 REPRESENTATION IN LITIGATION AS WELL AS A CONTEMPT CITATION.

2 AND IF YOU DON'T HAVE THAT TYPE OF FIRM THAT COULD  
3 HANDLE BOTH, YOU MAY NEED A SECOND LAWYER THAT SPECIALIZES IN  
4 DEFENDING CONTEMPT CITATIONS. SEEMS TO ME THAT THAT WOULD BE  
5 SOMETHING THAT WOULD BE REQUIRED IN THIS CIRCUMSTANCE, RIGHT?

6 MR. KRAMER: YES, I UNDERSTAND, YOUR HONOR.

7 THE COURT: ALL RIGHT. SO I'D LIKE TO HEAR FROM  
8 FACEBOOK. THEY FILED THEIR CASE MANAGEMENT CONFERENCE AND  
9 STATEMENT. AND THERE'S AN INDICATION THAT YOU WOULD LIKE TO  
10 REOPEN DISCOVERY NOTWITHSTANDING THE LACK OF REPRESENTATION;  
11 IS THAT CORRECT?

12 MS. MEHTA: YES, YOUR HONOR. THERE'S TWO ISSUES I  
13 THINK THAT WERE RAISED IN THE CMC STATEMENT. THE FIRST IS  
14 WHEN WE SUBMITTED THAT STATEMENT, WE DID NOT KNOW THAT  
15 MR. KRAMER HADN'T FOUND COUNSEL YET. THAT DECLARATION CAME TO  
16 US AFTER WE SUBMITTED THAT STATEMENT, SO WE HAD PROPOSED A  
17 SCHEDULE FOR HOW TO PROCEED GOING FORWARD ON THE ASSUMPTION  
18 THAT HE HAD NEW COUNSEL.

19 THE SECOND ISSUE IS IF IN FACT HE IS GOING TO BE  
20 PERMITTED MORE TIME TO TRY TO SECURE COUNSEL, THEN WE WOULD  
21 ASK THE COURT TO ORDER DISCOVERY IN THE INTERIM BECAUSE THERE  
22 IS A MINIMUM DISCOVERY THAT CAN BE DONE THAT DOESN'T IMPLICATE  
23 ANY PRIVILEGE QUESTIONS. THAT'S EVEN SETTING ASIDE WHETHER OR  
24 NOT THE PRIVILEGE ISSUE SHOULD REALLY BAR DISCOVERY FROM GOING  
25 FORWARD GIVEN THE CRIME FRAUD RULING.

26 BUT EVEN IF WE DON'T WANT TO GET THAT FAR, THERE ARE

1 HAVING COUNSEL TO REPRESENT YOUR ENTITY AND THEN DEFEND  
2 AGAINST ANY POTENTIAL SANCTION OR CONTEMPT CITATION. THAT'S  
3 ALL. EVERY TIME WE'VE CONVENED IN THIS CASE THERE HAVE BEEN  
4 FROLICS AND DETOURS INTO CAMBRIDGE ANALYTICA OR WHAT THE HOUSE  
5 OF COMMONS MAY DO OR LOOKING AT CANADIAN LEGISLATURE OR OTHER  
6 MATTERS THAT ARE UNRELATED TO THE VIOLATION OF THE PROTECTIVE  
7 ORDER AND RETENTION OF COUNSEL.

8 SO, SIR, YOUR CHARGE IS TO RETAIN COUNSEL SO THAT  
9 YOU CAN DEFEND AGAINST ANY ACTIONS THAT MAY BE PURSUED BY  
10 FACEBOOK. DO YOU UNDERSTAND THAT, SIR?

11 MR. KRAMER: YES, YOUR HONOR.

12 THE COURT: SO WHAT ARE YOU GOING TO DO?

13 MR. KRAMER: YOUR HONOR, I NEED TO UNDERSTAND HOW  
14 MUCH TIME I HAVE THAT THE COURT IS WILLING TO GIVE ME AND I  
15 NEED TO MOVE AS QUICKLY, YOU KNOW, AS I CAN BASED ON THE  
16 AMOUNT OF TIME I'VE BEEN GIVEN.

17 THE COURT: ALL RIGHT. WELL, I'M GOING TO GIVE YOU  
18 SOME TIME AND I WILL TELL YOU HOW MUCH IN A MOMENT. BUT I  
19 BELIEVE THAT MS. MEHTA DID OUTLINE EXACTLY THE KIND OF  
20 INFORMATION THAT YOU ALREADY HAVE IN THE WAY OF ORDERS,  
21 DISCOVERY REQUESTS AND SO FORTH.

22 EVERYTHING IS PRETTY MUCH OUTLINED AS TO WHAT THE  
23 PARAMETERS OF THE REPRESENTATION WOULD BE CONCERNING THE  
24 POTENTIAL CONTEMPT AND SANCTIONS ISSUES.

25 MR. RUSSO: YOUR HONOR.

26 THE COURT: MR. RUSSO.

1 ARGUMENTS OF COUNSEL AND MR. KRAMER AND ALSO MR. KRAMER'S  
2 SPECIALLY RETAINED COUNSEL MR. RUSSO.

3 THE COURT FINDS THAT THE PLAINTIFF'S CEO THAT IS TO  
4 SAY MR. KRAMER HAS BEEN DILATORY IN RETAINING COUNSEL. IT HAS  
5 BEEN WELL OVER SIX MONTHS NOW SINCE MR. KRAMER DID KNOW THAT  
6 THERE WAS A NECESSITY TO RETAIN NEW CORPORATE COUNSEL INASMUCH  
7 AS MR. GODKIN HAD MADE A REPRESENTATION ON NOVEMBER 30TH THAT  
8 HE HAD INTENDED TO WITHDRAW OR WAS CONSIDERING WITHDRAWING DUE  
9 TO A CONFLICT. WE HAVE BEEN LIVING WITH THE SAME SET OF FACTS  
10 FOR SEVERAL MONTHS, OVER SIX MONTHS.

11 SO THIS COURT IS ORDERING THAT MR. KRAMER RETAIN  
12 COUNSEL FOR THE CORPORATION NO LATER THAN JUNE 28TH, 2019, AT  
13 5:00 P.M. AND YOU SHALL FILE A DECLARATION EITHER THROUGH  
14 MR. RUSSO. AND I SUGGEST THAT YOU GO THROUGH MR. RUSSO TO  
15 FILE THAT DECLARATION THAT YOU HAVE COMPLIED OR WHAT THE  
16 STATUS IS ON A DAY IMMEDIATELY FOLLOWING JUNE 28TH. SO LET US  
17 KNOW NO LATER THAN JULY 1ST THAT YOU'VE RETAINED COUNSEL.  
18 YOUR DEADLINE IS JUNE 28TH. ALL RIGHT.

19 MS. MEHTA: YOUR HONOR, MAY I JUST THANK YOU FOR  
20 THAT FOR LAYING OUT THE TIMELINE. I JUST WANTED TO ASK IN  
21 TERMS OF WHAT THE NEXT STEPS WOULD BE AFTER THAT DECLARATION  
22 COMES IN, SO I KNOW YOUR CALENDAR FILLS UP VERY QUICKLY.  
23 OBVIOUSLY ONCE NEW COUNSEL IS RETAINED WE WANT TO GET IN FRONT  
24 OF YOUR HONOR AS QUICKLY AS POSSIBLE TO SET A CASE MANAGEMENT  
25 CONFERENCE AND BEGIN THE DISCOVERY PROCESS.

26 THE COURT: THE NEXT THING TO DO IS TO SET A CASE

1 STATE OF CALIFORNIA )

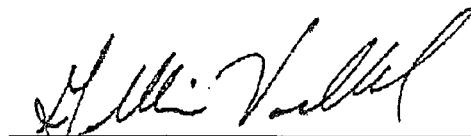
2 ) SS.

3 COUNTY OF SAN MATEO )

4 I, GERALDINE VANDEVELD, OFFICIAL COURT REPORTER,  
5 COUNTY OF SAN MATEO, STATE OF CALIFORNIA, DO HEREBY CERTIFY:

6 THAT THE FOREGOING CONTAINS A TRUE, FULL AND CORRECT  
7 TRANSCRIPT OF THE PROCEEDINGS GIVEN AND HAD IN THE  
8 WITHIN-ENTITLED MATTER THAT WERE REPORTED BY ME AT THE TIME  
9 AND PLACE MENTIONED AND THEREAFTER TRANSCRIBED BY ME OR AT MY  
10 DIRECTION INTO LONGHAND TYPEWRITING AND THAT THE SAME IS A  
11 CORRECT TRANSCRIPT OF THE PROCEEDINGS.

12 DATED: JUNE 21, 2019

13  
14 

15 GERALDINE VANDEVELD, C.S.R. #8634  
16 OFFICIAL COURT REPORTER

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# **EXHIBIT B**

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN MATEO

*SIX4THREE, LLC, a Delaware Limited  
Liability Company,*

**CERTIFIED TRANSCRIPT**

PLAINTIFF,

vs.

Case No. CIV533328

*FACEBOOK, INC., a Delaware  
Corporation, et. al.,*

DEFENDANTS.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE: HONORABLE RAYMOND V. SWOPE, JUDGE

DEPARTMENT 23

JULY 19, 2019

A P P E A R A N C E S:

FOR THE PLAINTIFF: MACDONALD FERNANDEZ, LLP  
By: Reno Fernandez, Esq.  
221 Sansome Street, 3rd Fr.  
San Francisco, CA 94104

FOR THE DEFENDANTS: DURIE TANGRI  
By: Sonal N. Mehta, Esq.  
Josh Lerner, Esq.  
Cat Kim, Esq.  
Laura Miller, Esq.  
Zach Abrahamson, Esq.  
217 Leidesdorff Street  
San Francisco, CA 94111  
(Also present: Natalie Nagle)

FOR THE INDIVIDUALS: ENTREPRENEUR LAW GROUP, LLP  
By: Jack Russo, Esq.  
401 Florence Street  
Palo Alto, CA 94301

FOR THE NON-PARTY: MURPHY PEARSON BRADLEY&FEENEY  
By: James A. Murphy, Esq.  
88 Kearney Street, 10th Fl.  
San Francisco, CA 94108

REPORTED BY: CINDY DEL ROSARIO, CSR NO. 11409, RPR, CCRR 094

1 Facebook.

2 THE COURT: Good afternoon.

3 (This matter was originally on for the)  
4 (four motions to seal and also for case management)  
5 (conference:) (My understanding now is that there)  
6 (has been a writ filed with regard to my hearing)  
7 (this case and it is pending, so as such, the)  
8 (purpose of the hearing today is for this Court to)  
9 (reschedule the motions to seal and another case)  
10 (management conference).

11 My thinking is that the month of August  
12 is not available and it may take some time for  
13 the Court to make its decision. We should  
14 probably look at September.

15 Mr. Lerner.

16 MR. LERNER: I understand, your Honor.  
17 If it's possible we would like to briefly address  
18 the effect of not doing anything prior to another  
19 hearing. We think that your Honor, obviously,  
20 has the power to keep things moving and the fact  
21 that they filed a writ, particularly given that  
22 the Court of Appeal has the ability to stay the  
23 case, should not, yet again, stop this case.

24 Your orders, as you know better than I  
25 do, have not been regarded here. And this is one  
26 more instance of that. And for us, there are

1 try and stem the consequences of that just a  
2 little bit.

3 **THE COURT:** Well, there's, at least, one)  
4 **problem with proceeding forward and that is that**  
5 **several weeks ago I had ordered Mr. Kramer to**  
6 **retain counsel for the express purpose of**  
7 **representing Six4Three with regard to the**  
8 **discovery issues.**

9 I also indicated that it may be prudent  
10 to retain a second set of counsel for the purpose  
11 of any sanctions or to prepare for any contempt  
12 citations that may be issued or, at least, filed  
13 as requested by Facebook and the defendants.

14 Today, Mr. Fernandez has appeared on  
15 behalf of Six4Three, but I don't know what the  
16 status of his appearance is other than what I  
17 read in his papers, which is the representation  
18 of Six4Three is limited in scope. The limited  
19 scope is that, number one, representation will be  
20 had only if there is a motion for sanctions or a  
21 contempt citation, and we have neither here.

22 Nothing's been filed by Six4Three. That's the  
23 basic problem.

24 Technically, Mr. Fernandez, your firm is  
25 not appearing with regard to the CMC or the  
26 motions to seal because your scope is limited as

1 other or further work," comma, "this notice will  
2 be amended." Period. Closed quote.

3 So, essentially, Six4Three is  
4 unrepresented with regard to the discovery issues  
5 on why the information was leaked or disclosed in  
6 violation of the protective orders that have been  
7 issued or subsequent restraining orders that I've  
8 issued in this case in 2018 and any orders that  
9 were relevant in 2019.

10 MR. FERNANDEZ: Your Honor, I believe we  
11 do represent Six4Three with respect to any  
12 potential motion or any proceedings arising from  
13 that.

14 THE COURT: That's not what this says.  
15 It says, "We will defend a motion for sanctions  
16 if brought by the defendant as contemplated in  
17 their recent case management conference statement  
18 and we will appear at the case management  
19 conference." It says, "This engagement is  
20 strictly limited." Period.

21 (I don't think I need to reiterate the)  
22 (last sentence.) (So everyone is trying to)  
23 (determine exactly what the scope of your)  
24 (representation is so that we can move forward)  
25 (with the case.) (Right now we can't.) (I certainly)  
26 (didn't issue any tentative rulings with regard to)

- ① the motions to seal because there was no
- ② representation of Six4Three with regard to the
- ③ substantive motions pending.

4 MR. FERNANDEZ: Your Honor, the  
5 procedure for handling the discovery issues would  
6 be a motion to sanction, but it's not pending.  
7 We are representing Six4Three at this hearing.  
8 That's what the Notice of Limited Engagement  
9 says. I don't think your Honor is commenting  
10 that any of that is improper; only that in the  
11 context of that we can't really move forward.  
12 Also in the context of what your Honor said at  
13 the outset of the hearing, the pending writ and  
14 the question of whether any orders entered by  
15 your Honor will be deemed void or not. We want  
16 to avoid problems. I think your Honor's initial  
17 suggestion is the best one, the one that avoids  
18 the most problems.

19 THE COURT: You still didn't answer the  
20 question as to the scope of the representation.  
21 There's a motion -- the motion for sanctions is  
22 not pending.

23 MR. FERNANDEZ: Uh-huh.

24 THE COURT: There is a motion to reopen  
25 discovery and the discovery was to be open and  
26 conducted if the corporation Six4Three was

1 represented by counsel. And unfortunately, for  
2 the general purposes of representing the  
3 corporation that has not been done.

4 MR. FERNANDEZ: Your Honor --

5 THE COURT: There's no pending motion  
6 for sanctions.

7 MR. FERNANDEZ: Your Honor, I think this  
8 is a little bit of a distraction and a red  
9 herring. If we had appeared today under a full  
10 scope appearance, we would still have the same  
11 concerns about our 170.6 challenge. Had we  
12 appeared under a full scope and brought our 170.6  
13 challenge, we'd still have the same procedural  
14 problems we're facing.

15 THE COURT: Except the difference is I  
16 directed your client to obtain counsel to  
17 generally represent the corporation so that we  
18 could move forward.

19 MR. FERNANDEZ: And, your Honor, we  
20 don't concede that we're in violation of that  
21 order. The point is that your Honor doesn't have  
22 the authority at the moment to enter any further  
23 order.

24 THE COURT: Mr. Lerner?

25 MR. LERNER: Two things: First, the  
26 suggestion that there is one vehicle for getting

1 afternoon. That's all that we can do. So I'll  
2 set this matter for a case management conference  
3 to August 7th, 2019 at 9:00 a.m. Counsel had  
4 better be prepared to indicate representation on  
5 that date and that will be the new CMC date. (And)  
6 (provided that there is full representation, the)  
7 (discovery will go forward from that day.) (All)  
8 (right?)

9 MR. FERNANDEZ: Thank you, your Honor.

10 THE COURT: Yes, Mr. Murphy?

11 MR. MURPHY: Did I hear you say that the  
12 motion for discovery to reopen discovery will be  
13 heard that date, so I assume that the stay  
14 ordered previously issued from the Court will  
15 remain in place until that time?

16 THE COURT: Well, it should because  
17 there's no representation.

18 MR. MURPHY: Correct. Thank you, your  
19 Honor.

20 MR. LERNER: And we, again, would just  
21 ask, given the history of disregarding your  
22 Honor's order on this point, if there is not full  
23 representation so that after ten months we can  
24 finally get some information, we think monetary  
25 sanctions are more than in order.

26 MR. RUSSO: Your Honor, we think there's

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN MATEO

STATE OF CALIFORNIA  
COUNTY OF SAN MATEO

I, CINDY O. DEL ROSARIO, A CERTIFIED  
SHORTHAND REPORTER AND OFFICIAL REPORTER OF THE STATE  
OF CALIFORNIA, COUNTY OF SAN MATEO, DO HEREBY CERTIFY  
THAT THE FOREGOING PAGES 1 THROUGH 40 COMPRIZE A TRUE,  
ACCURATE AND CORRECT COMPUTER-AIDED TRANSCRIPTION OF  
THE PROCEEDINGS HAD AND ANY TESTIMONY TAKEN IN  
DEPARTMENT 23 ON JULY 19, 2019.

I FURTHER CERTIFY THAT I HAVE COMPLIED WITH  
CCP237(a) (2) IN THAT ALL PERSONAL JUROR IDENTIFYING  
INFORMATION HAS BEEN REDACTED IF APPLICABLE.

DATED THIS 21st DAY OF JULY 2019

*Cindy Del Rosario*  
Cindy O. Del Rosario  
CSR NO. 11409, RPR, CCRR NO. 094

# **EXHIBIT C**

**From:** "Hoo, Channing" <[Channing.Hoo@jud.ca.gov](mailto:Channing.Hoo@jud.ca.gov)>  
**Date:** July 19, 2019 at 4:35:21 PM PDT  
**To:** "[reno@macfern.com](mailto:reno@macfern.com)" <[reno@macfern.com](mailto:reno@macfern.com)>,  
"[jlerner@durietangri.com](mailto:jlerner@durietangri.com)" <[jlerner@durietangri.com](mailto:jlerner@durietangri.com)>  
**Subject: A157817 - SIX4THREE, LLC v. Superior Court for  
the County of San Mateo [ Trial Court Case No:  
CIV533328 ]**

To All Counsel:

Courtesy email. In the attachment, please find the court's 7.19.19 disposition order.  
Paper copies are being mailed out.  
Channing

(Mr.) Channing Hoo  
Deputy Clerk, Division 4  
California Court of Appeal, First Appellate District  
415.865.7296

# COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

SIX4THREE, LLC,

Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN MATEO,

Respondent;

FACEBOOK, INC., et al.,

Real Parties in Interest.

Court of Appeal, First Appellate District
<b>FILED</b>
JUL 19 2019
Charles D. Johnson, Clerk
Deputy Clerk

A157817

San Mateo County Super. Ct.  
No. CIV533328

THE COURT\*:

The petition for writ of mandate is denied. The request for a stay is denied.

**Pollak, P.J.**

JUN 19 2019

Date: \_\_\_\_\_

P.J.

\* Pollak, P.J., Streeter, J., and Brown, J.

# **EXHIBIT D**

## Catherine Kim

---

**From:** Gabriela Galindo <Gabriela@servingbyirving.com>  
**Sent:** Saturday, March 23, 2019 11:48 AM  
**To:** Catherine Kim  
**Cc:** Mark S. Pincus; info  
**Subject:** Re: Service for Facebook in Sullivan County

We attempted service. This address is general address for the complex. I ran a search for him, the address we found is within this complex. The complex is basically empty. There are no vehicles. Our server could hardly get into this place due to the accumulated mud. The locations in the area are summer vacation homes. People do not really come up this way during the winter.

Please advise if you wish us to try back at a later time today or on Monday morning.

Gabriela Galindo  
Serving by Irving, Inc.

On Mar 23, 2019, at 12:24 PM, Gabriela Galindo <Gabriela@servingbyirving.com> wrote:

Understood.

Gabriela Galindo  
Serving by Irving, Inc.

On Mar 23, 2019, at 11:55 AM, Catherine Kim <CKim@durietangri.com> wrote:

Hi Mark – confirmed, we have to serve him personally.

Thanks,  
Cat

---

**From:** Mark S. Pincus <mark@pincus-law.com>  
**Sent:** Saturday, March 23, 2019 8:54 AM  
**To:** Gabriela Galindo <Gabriela@servingbyirving.com>  
**Cc:** info <info@servingbyirving.com>; Catherine Kim <CKim@durietangri.com>  
**Subject:** RE: Service for Facebook in Sullivan County

I believe this is not Mr. Scaramellino's "actual place of business, dwelling place, or usual place of abode," so substituted service would not be sufficient. I have cc'ed Catherine Kim, Facebook's counsel in California.

Catherine, please confirm that, to your knowledge, this address is neither Mr. Scaramellino's "actual place of business, dwelling place, or usual place of abode." If it is not, we have to serve him personally and cannot just leave it with the person who answers the door.

**Mark S. Pincus | Managing Member**  
Pincus Law LLC  
90 Broad Street, 23<sup>rd</sup> Floor  
New York, NY 10004

**t: (212) 962-2900 | f: (347) 803-1789**  
**mark@pincus-law.com**

---

**From:** Gabriela Galindo <[Gabriela@servingbyirving.com](mailto:Gabriela@servingbyirving.com)>  
**Sent:** Saturday, March 23, 2019 11:50 AM  
**To:** Mark S. Pincus <[mark@pincus-law.com](mailto:mark@pincus-law.com)>  
**Cc:** info <[info@servingbyirving.com](mailto:info@servingbyirving.com)>; Catherine Kim <[CKim@durietangri.com](mailto:CKim@durietangri.com)>  
**Subject:** Re: Service for Facebook in Sullivan County

Can we substitute service if he's not home or do you need in hand personal service only? I assume if no one is there we can keep trying - correct?

Gabriela Galindo  
Serving By Irving Inc.  
Tel. (212) 233-3346

---

**From:** Mark S. Pincus <[mark@pincus-law.com](mailto:mark@pincus-law.com)>  
**Sent:** Saturday, March 23, 2019 11:26 AM  
**To:** Gabriela Galindo  
**Cc:** info; Catherine Kim  
**Subject:** RE: Service for Facebook in Sullivan County

This is acceptable. Thank you.

**Mark S. Pincus | Managing Member**  
Pincus Law LLC  
90 Broad Street, 23<sup>rd</sup> Floor  
New York, NY 10004  
**t: (212) 962-2900 | f: (347) 803-1789**  
**mark@pincus-law.com**

---

**From:** Gabriela Galindo <[Gabriela@servingbyirving.com](mailto:Gabriela@servingbyirving.com)>  
**Sent:** Saturday, March 23, 2019 11:13 AM  
**To:** Mark S. Pincus <[mark@pincus-law.com](mailto:mark@pincus-law.com)>  
**Cc:** info <[info@servingbyirving.com](mailto:info@servingbyirving.com)>  
**Subject:** Re: Service for Facebook in Sullivan County

I am waiting for my server to get back to me. This could be a summer home. Our fee to serve this/attempt this today would be \$850.00 minimum + subpoena fee which I haven't calculated yet + any travel time and waiting time involved.

Please let me know ASAP if these fees are acceptable and I will provide you with a credit card authorization form Monday morning.

Gabriela Galindo  
Serving by Irving, Inc.

On Mar 23, 2019, at 11:03 AM, Mark S. Pincus <[mark@pincus-law.com](mailto:mark@pincus-law.com)> wrote:

Good speaking with you before. I attach the subpoena we seek to serve on Thomas Scaramellino at 2674 State Route 42, Forestburgh, New York 12777. Thank you for your attention to this short-notice request.

Best,

Mark

**Mark S. Pincus | Managing Member**  
Pincus Law LLC  
90 Broad Street, 23<sup>rd</sup> Floor  
New York, NY 10004  
t: (212) 962-2900 | f: (347) 803-1789  
[mark@pincus-law.com](mailto:mark@pincus-law.com)

<2019.03.21 FINAL NY Subpoena to Scaramellino.pdf>

# **EXHIBIT E**

## RE: Control no.: 3478274 - Status report - Service to THOMAS SCARAMELLINO

 DELETE REPLY REPLY ALL FORWARD

...

SF Status &lt;SFstatus@nationwidelegal.com&gt;

Mark as unread



Mon 4/15/2019 1:22 PM

To: Jennifer Posada; Catherine Kim;

Cc: San Francisco Process &lt;sfprocess@nationwidelegal.com&gt;;

Hi there,

Please find as follows the status report:

**2<sup>nd</sup> attempt on: 4/12/19 @ 7:00pm (4133 REDWOOD AVENUE, NO. 1015)**

Gained access inside and spoke to Genesis in unit 1015, said subject and company are unknown, she's been living here since Nov. 2018 and it's an all-girl apartment and no business. Checked the directory for TallyGo and they are listed but there is no ring to that number which is #142. Tried asking the leasing office for a unit number and he said he wasn't able to provide server with tenant's information. Asked a couple of tenants but nobody seems to know of the company names within the premises. Also, none of the units have names on them.

Please advise how would you like us to proceed on this matter.

We will hold this order until further notice is given.

Thank You.

Sincerely,

**Marina Abdelnur**

Process Department – Status Desk.

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**NATIONWIDE  
LEGAL**

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859 Harrison Street Suite A | San Francisco | CA | 94107

T (415) 351 0400 | F (415) 351 0407 | E [sfprocess@nationwidelegal.com](mailto:sfprocess@nationwidelegal.com) & [sfstatus@nationwidelegal.com](mailto:sfstatus@nationwidelegal.com) | W [www.nationwidelegal.com](http://www.nationwidelegal.com)

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**From:** Jennifer Posada**Sent:** Monday, April 15, 2019 12:53 PM**To:** SF Status ; Catherine Kim**Cc:** San Francisco Process**Subject:** RE: Control no.: 3478274 - Status report - Service to THOMAS SCARAMELLINO

Hi Marina,

Do you have an update from the server re Tally Go? Thanks!

# **EXHIBIT F**



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FILED  
Superior Court of California  
County of San Francisco

APR 23 2018

CLERK OF THE COURT  
BY *Chris R. [Signature]*  
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEPARTMENT 305

KEVIN HALPERN & CELLURIDE  
WIRELESS, INC.,

Plaintiffs,

v.

16 UBER TECHNOLOGIES, INC., TRAVIS  
17 KALANICK, GARRETT CAMP, BILL  
18 TRENCHARD, SCOTT BELSKY, BILL  
19 GURLEY, BENCHMARK CAPITAL,  
BENCHMARK, FOUNDER COLLECTIVE,  
FIRST ROUND CAPITAL, RAISER, L.L.C.,  
RAISER CA L.L.C., and DOES 1-250

Defendants.

No. CGC-15-545825

ORDER AFTER APRIL 10, 2018  
CASE MANAGEMENT CONFERENCE

The Court held a Case Management Conference in the above matter on April 10, 2018. Plaintiffs appeared by Fabio E. Marino, Lucas H. Dahlin, and Nitin Gambhir. Defendant Travis Kalanick appeared by Colleen E. Popken and the remaining Defendants appeared by Ragesh K. Tangri and Joshua H. Lerner. The case will proceed as follows:

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1. The Court adopts the parties' proposed and agreed upon schedule for pre-trial deadlines:

<u>Category</u>	<u>Event</u>	<u>Date</u>
Motion to consolidate	Plaintiffs file motion to consolidate	April 24, 2018
	Defendants file opposition	May 11, 2018
	Plaintiffs file reply	May 17, 2018
	Hearing on motion to consolidate	May 24, 2018 at 2:30 p.m.
Motion to exclude the testimony of Mr. David Williams	Defendants file motion to exclude	May 21, 2018
	Plaintiffs file opposition	June 4, 2018
	Defendants file reply	June 14, 2018
	Hearing on motion to exclude	June 22, 2018 at 2:30 p.m.
Expert disclosure	Deadline for expert disclosures	June 1, 2018
	Deadline for rebuttal experts	TBD
Motion(s) for Summary Judgment	File motion(s) for summary judgment	June 15, 2018
	File opposition(s) to motion(s) for summary judgment	June 29, 2018
	File reply(ies) to motion(s) for summary judgment	July 11, 2018
	Hearing on motion(s) for summary judgment	July 16, 2018
Fact discovery	Close of fact discovery	July 16, 2018
Motions in limine	File motion(s) in limine	July 27, 2018
	File opposition(s) to motion(s) in limine	August 14, 2018
	Hearing on motion(s) in limine	September 7, 2018
Jury instructions	Parties exchange proposed jury instructions	July 27, 2018
	Parties exchange objections to proposed jury instructions	August 14, 2018
	File proposed jury instructions (with objections)	August 24, 2018
	Hearing on jury instructions	September 7, 2018
Exhibit and witness lists	Parties exchange exhibit and witness lists	July 27, 2018
	Parties exchange objections to exhibit and witness lists and supplemental exhibits and witnesses due	August 17, 2018
	File exhibit and witness lists	August 24, 2018

1	Deposition designations	Parties exchange deposition designations	July 27, 2018
2		Parties exchange objections to deposition designations and supplemental deposition designations	August 17, 2018
3		Parties exchange objections to supplemental deposition designations	August 24, 2018
4		File deposition designations (with objections)	August 31, 2018
5	Jury questionnaire	Exchange proposed jury questionnaires	August 14, 2018
6		Parties exchange objections to jury questionnaires	August 24, 2018
7		File jury questionnaire (with objections)	August 24, 2018
8	Statement of the case	Plaintiffs provide draft statement to Defendants	August 24, 2018
9		Defendants provide revisions to Plaintiffs	August 31, 2018
10		File joint statement of the case	September 4, 2018
11	Expert discovery	Close of expert discovery	August 31, 2018
12	Trial	Trial	September 17, 2018

13        2. Defendants' anticipated motion for sanctions will be set at a later time after counsel takes  
 14 the depositions of Mr. Kevin Halpern and Mr. James Barnes.

15        3. The parties have agreed to continue to meet and confer regarding Defendants' request to  
 16 allow their forensic expert to inspect certain electronic devices.

17        4. If the parties wish to request an informal telephone conference with the Court, they may  
 18 do so by contacting the clerk of Department 305 by phone at 415-551-3732 or by email to  
 19 [complex305@sftc.org](mailto:complex305@sftc.org).

20        5. With regard to Defendants' request for a physical inspection of paper copies of  
 21 documents, Defendants will create a list of documents that counsel wants for physical inspection.

22        6. With regard to Defendants' request for Mr. Halpern's credit card statements, Defendants  
 23 will send a letter to Plaintiffs outlining what records Defendants are requesting.

24        7. The Court will email a sample jury questionnaire to all counsel as a reference.

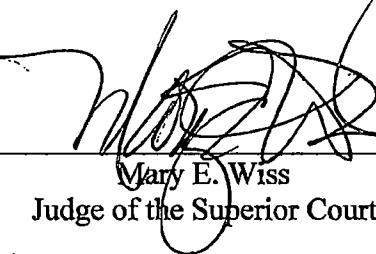
25        8. The parties have agreed to discuss whether Uber drivers will be eligible to participate as  
 26 potential jurors.

27        9. The next Case Management Conference is set for May 24, 2018 at 2:30 p.m., following

1 the hearing on Plaintiffs' motion to consolidate, in Department 305 of the above-entitled court. A brief  
2 joint case management statement (limited to a maximum of five pages for each) must be filed, and two  
3 copies delivered to Department 305, no later than three court days prior to the conference.

4 IT IS SO ORDERED.

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6 Dated: April 23, 2018  
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Mary E. Wiss  
Judge of the Superior Court

Superior Court of California  
County of San Francisco

KEVIN HALPERN & CELLURIDE  
WIRELESS, INC.,

Plaintiffs,

vs.

UBER TECHNOLOGIES, INC., *et al.*,

Defendants.

Case Number: CGC-15-545825

**CERTIFICATE OF ELECTRONIC SERVICE**  
(CCP 1010.6(6) & CRC 2.260(g))

I, T. Michael Yuen, Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On April 23, 2018, I electronically served the ORDER AFTER APRIL 10, 2018 CASE MANAGEMENT CONFERENCE via File&ServeXpress® on the recipients designated on the Transaction Receipt located on the File&ServeXpress® website.

Dated: April 23, 2018

T. Michael Yuen, Clerk

By:

  
Craig Blackstone, Deputy Clerk